

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

## **JOINT REPORT ON DISCOVERY AND SCHEDULING**

Pursuant to the Court's June 4, 2009 Order (DE 22), counsel for the parties conferred regarding discovery and scheduling issues at 9:00 a.m. on June 17, 2009, in the offices of Leitman, Siegal, Payne & Campbell, P.C. Present for Plaintiffs were Donald Stewart, Carolyn Smith Gidiere, and Dagney Johnson Walker; present for Defendants were Matt Lembke, William Brooks, Greg Hawley, Michael Sansbury, and Ted Hosp.

## **DISCOVERY**

Prior to the meeting, Plaintiffs provided a list of topics on which they believe discovery is needed to address the jurisdictional issues raised in Defendants' Motion to Dismiss. A copy of that letter from Donald Stewart to Ted Hosp dated June 15, 2009, is attached hereto as Exhibit A.

## A. Defendant's Position on Discovery:

Defendants' position is that, with the exception of the contracts between Defendants and the PACT Board,<sup>1</sup> none of the discovery topics listed by Plaintiffs are relevant to the jurisdictional issues before this Court. Based upon the allegations of the Complaint, it is clear

<sup>1</sup> Copies of those contracts were attached to the Defendants' motions to dismiss.

that the Plaintiffs have suffered no injury because PACT has not failed to make any tuition payments on behalf of the identified PACT participants. Indeed, PACT could not have failed to make tuition payments on behalf of the identified PACT participants because those participants are not expected to attend college for several years.

It is also incontrovertible that every PACT participant has received his or her full contractually-defined benefits to date, and the PACT Board has made clear that all payments will be made for the next academic year. In light of these undisputed facts, there is no need for any discovery to address the issues of Article III standing and ripeness.

Accordingly, the discovery requested by Plaintiffs is not relevant to the jurisdictional issues and appears to be nothing more than an improper fishing expedition. Such an expedition would be unduly burdensome on these Defendants at this time, since the jurisdictional issues have been fully presented to the Court and are due to be resolved in the Defendants' favor.

Furthermore, based on Plaintiffs' list of topics, it appears that a large amount of the discovery sought by Plaintiffs will be directed to third parties, heaping additional burdens on them. The imposition of such burdens should not be authorized by this Court in the absence of jurisdiction. Should the jurisdictional issues be resolved in Plaintiffs' favor, Plaintiffs will have sufficient opportunity to conduct merits discovery in accordance with the Federal Rules.

**B. Plaintiffs' Position on Discovery:**

Plaintiffs believe that discovery is needed both with regard to these Defendants and third parties, including the PACT Board in order to address the jurisdictional issues raised by the Defendants in their Motion to Dismiss. **[TO BE ADDED BY PLAINTIFFS]**

**C. Timing Issues:**

In the event the Court allows Plaintiffs to conduct discovery on the jurisdictional issues, the parties agree that ninety (90) days is a reasonable period in which to complete that discovery. Accordingly, should the Court grant Plaintiffs' request to conduct discovery, the parties agree that such discovery shall be completed within ninety (90) days of the Court's order.

### **SCHEUDLING**

The parties have agreed to establish separate briefing schedules for the Rule 12(b)(1) jurisdictional issues, and the Rule 12(b)(6) issues raised in Defendants' Motion to Dismiss, and propose the following schedule:

**A. With regard to the Article III standing and ripeness issues raised by Defendants under Rule 12(b)(1):**

In the event the Court does not permit Plaintiffs' discovery, Plaintiffs' submission in opposition to Defendants' Motion to Dismiss on 12(b)(1) grounds shall be filed no later than twenty-one (21) days after the Court's Order denying discovery. Defendants' reply submission shall be filed no later than eleven (11) days after the date on which the Plaintiffs' responsive submission was due.

In the event the Court allows Plaintiffs' discovery, Plaintiffs' responsive submission to the Defendants' Motion to Dismiss on 12(b)(1) grounds shall be filed no later than twenty-one (21) days after the deadline to complete discovery. Defendants' reply submission shall be due eleven (11) days after the date on which Plaintiffs' responsive submission was due.

**B. With regard to the issues raised under Rule 12(b)(6):**

In the event the Court grants the Motion to Dismiss filed by Defendants pursuant to Rule 12(b)(1), the case will be concluded and no further action will be necessary.

In the event the Court denies the Motion to Dismiss filed by Defendants pursuant to Rule 12(b)(1), the parties respectfully request a status conference with the Court, either in person or by telephone, in order to establish a process and schedule for addressing the 12(b)(6) motion.

Dated this 25<sup>th</sup> day of June, 2009.

Respectfully submitted,

/s Donald W. Stewart

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